

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

OSCAR VASQUEZ,)		
	Plaintiff,)	
)	CIVIL ACTION
)	
)	No. 03-2147-CM
v.)	
)	
)	
JOHNSON COUNTY HOUSING COALITION, INC.,)		
	Defendant.)	
)	
)	
)	
)	

MEMORANDUM AND ORDER

Pending before the court is defendant's Motion to Dismiss and/or Strike plaintiff's Amended Complaint (Doc. 7) for failure to comply with Rule 15 of the Federal Rules of Civil Procedure. As set forth below, defendant's motion is granted.

I. Background

On April 16, 2003, defendant filed its answer to plaintiff's complaint and electronically served plaintiff's counsel. Plaintiff then filed an Amended Complaint without obtaining leave of the court on April 18, 2003. Defendant asserts that it did not consent to allow defendant to file an amended complaint without leave. Plaintiff does not oppose defendant's motion.

II. Legal Standard

Federal Rule of Civil Procedure 12(f) gives courts the power "[u]pon motion made by a party

before responding to a pleading” to strike any pleading in part or in its entirety. Rule 15(a) provides that “[a] party may amend the party’s pleading once as a matter of course at any time before a responsive pleading is served . . . [o]therwise a party may amend the party’s pleading only by leave of court or by written consent of the adverse party.”

III. Analysis

Defendant moves the court to strike plaintiff’s Amended Complaint in accordance with Rule 12(f). Plaintiff has not responded to defendant’s motion. Because plaintiff filed his Amended Complaint two days after defendant filed its answer, plaintiff’s amendment falls outside of the permissive filing period. A plaintiff may amend the complaint after a defendant has served a responsive pleading “only by leave of court or by written consent of the adverse party.” Fed. R. Civ. P. 15(a). Generally, if an amendment requiring permission of the court or the opposing party is served without obtaining the court’s leave or opposing party’s consent, it is without legal effect and will not be considered by the court. *Dole v. Reynolds*, No. Civ. A. 89-4007-S, 1990 WL 186269, at *1 (D. Kan. Oct. 2, 1990) (citing *Straub v. Desa Indus., Inc.*, 88 F.R.D. 6, 8 (M.D. Pa. 1980)). Where a plaintiff does not have leave to amend portions of his complaint, those portions should be stricken. *Sheldon v. Vermonty*, No. Civ. A. 98-2277-JWL, 2002 WL 598333, at *1 (D. Kan. Mar. 4, 2002). Plaintiff had neither leave of court nor written consent of the opposing party to assert additional counts in his Amended Complaint. Accordingly, the court strikes plaintiff’s Amended Complaint.

IT IS THEREFORE ORDERED THAT Defendant’s Motion to Strike plaintiff’s Amended Complaint (Doc. 7) is granted.

Dated this 16th day of June 2003, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge